

It was also argued that the learned Subordinate Judge had refused the defendant to put any further questions to the plaintiff or to cross-examine him as a hostile witness. There is nothing on the record to show this, but even if it were so, the defendant having agreed to abide by the plaintiff's statement in respect of the question at issue the statement recorded by the learned Subordinate Judge fully covered the matter in controversy. Moreover a party cannot be allowed to cross-examine his own witness and merely because the statement made by the plaintiff on the simple question of fact whether the consideration had been paid or not was against the defendant it could be no ground for his being allowed to cross-examine the plaintiff.

For the above reasons we are of opinion that the statement made by the plaintiff in the circumstances stated above is binding on the defendant and is decisive of the claim. We accordingly dismiss the appeal with costs.

Appeal dismissed.

APPELLATE CIVIL

Before Mr. Justice Ziaul Hasan

LALA RAMJI LAL (DEFENDANT-APPELLANT) *v.* THE MUNICIPAL BOARD, LUCKNOW (PLAINTIFF-RESPONDENT)*

1936
August 20

United Provinces Municipalities Act (II of 1916), sections 117, 166, 167 and 169—Transfer of Property Act (IV of 1882), sections 100 and 3—Sale in execution of a house liable to Municipal taxes—Municipal taxes in arrears for a period prior to sale—Auction-purchaser, whether can be deemed to have constructive notice of such arrears—Arrears of tax prior to sale, liability of auction-purchaser for.

A decreeholder when he wants to bring any property to sale in execution of his decree is required by law to make

*Second Civil Appeal No. 123 of 1935, against the decree of Babu Bhagwati Prasad, Subordinate Judge of Lucknow, dated the 25th of January, 1935, upholding the decree of Pandit Hari Shankar Chaturvedi, Munsif of Lucknow, dated the 10th of October, 1934.

1936
BABU
BISHUNATH
SINGH
v.
LALA
JAMUNA
DAS

*Srivastava,
C. J. and
Ziaul Hasan,
J.*

1936
 LALA
 RAMJI LAL
 v.
 THE
 MUNICIPAL
 BOARD,
 LUCKNOW

inquiry into and disclose every encumbrance to which the property sought to be sold is liable, but no rule of law requires him to make inquiry at the office of a Municipal Board to find out whether any Municipal taxes are due against the property, and it would be stretching the doctrine of constructive notice too far to say that in every case in which a person wants to bid for property liable to Municipal taxes he ought to make inquiries, before making the bid, whether any Municipal taxes are outstanding against the property, or to hold that he was grossly negligent if he did not make such inquiry. Therefore it is inequitable to hold an auction-purchaser liable for Municipal taxes that accrued due against the house purchased by him prior to the date of his purchase. *Akhoy Kumar Banerjee v. Corporation of Calcutta* (1), referred to.

Mr. *R. K. Bose*, for the appellant.

Mr. *Mohammad Ahmad*, for the respondent.

ZIAUL HASAN, J.:—This is an appeal against a decree of the learned Subordinate Judge of Lucknow dismissing the appellant's first appeal against a decree of the Munsif of Lucknow.

The appellant Ramji Lal obtained a money decree against one Abdullah and in execution of that decree put to sale a house belonging to the judgment-debtor and situated within the limits of the Lucknow Municipality. The house was sold and purchased by the decree-holder himself and he obtained delivery of possession through Court in June, 1932. The house was assessed to house tax and water rates at the rate of about Rs.40 per annum and the taxes were in arrears from the 1st of April, 1931 to the 31st of May, 1932. The suit which has given rise to this appeal was brought by the Lucknow Municipal Board for recovery of these arrears from the appellant-auction-purchaser. The defence was that the taxes being due for a period prior to his purchase, the defendant was not liable to pay them. This defence was overruled by the trial Court and the suit of the Municipal Board decreed. The defendants filed an appeal but the learned Subordinate

Judge concurred with the view of the trial Court and dismissed the appeal.

The claim of the Municipal Board respondent against the appellant rests on section 177 of the United Provinces Municipalities Act of 1916 which is as follows:

“All sums due on account of a tax imposed on the annual value of buildings or lands or of both shall, subject to the prior payment of the land revenue (if any) due to His Majesty thereupon, be a first charge upon such buildings or lands.”

The Board claimed a charge over the house purchased by the appellant for the arrears in suit. Under section 100 of the Transfer of Property Act, it is necessary for the enforcement of a charge against any property in the hands of a person to whom the property has been transferred for consideration that he had notice of the charge. It is not the case of the Municipal Board that notice of this charge was given to the appellant either before or at the time of his auction-purchase but reliance is placed on the definition of “notice” in section 3 of the Transfer of Property Act and it is said that the appellant should be deemed to have had constructive notice of the charge. According to section 3 of the Transfer of Property Act “a person is said to have notice of a fact when he actually knows that fact or when, but for wilful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it.” It is not claimed by the appellant that he made any inquiry or search at the Municipal Office to discover whether or not any arrears of taxes were due about the house that he was going to purchase at the auction sale, and therefore the question is whether the appellant “ought to have made” such an inquiry or search or whether he was grossly negligent in not making such inquiry or search. After a consideration of all the circumstances of the case, I am of opinion that the appellant cannot be said to have wilfully abstained from making inquiry or search which he ought to have made or that he was grossly

1936

LALA
RAMJI LAL
v.
THE
MUNICIPAL
BOARD,
LUCKNOW

Ziaul Hasan,
J.

1938

LALA
RAMJI LAL
v.
THE
MUNICIPAL
BOARD,
LUCKNOW

Ziaul Hasan,
J.

negligent. Under the bye-laws of the Lucknow Municipality (in fact of almost all the Municipalities in this province) house and water taxes are payable in advance. Chapter VI of the Municipalities Act, which lays down the procedure for recovery of the amounts due to a Municipality gives very wide power to Municipal Boards for recovery of such amounts. Sections 166 and 167 lay down that a bill for the amount due will be presented in the first instance. If the amount is not paid within fifteen days from the presentation of the bill, section 168 authorises the Board to cause a notice of demand to be served upon the person liable for payment and if payment is not made within a further period of fifteen days from the service of notice of demand, section 169 authorises the issue of a warrant for recovery of the amount due by distress and sale of the movable property of the defaulter. So wide being the powers of Municipal Boards for recovery of the Municipal taxes it should indeed be very seldom that any taxes should fall in arrears and in these circumstances can it be said with reason that when a person who does not make an inquiry about Municipal taxes due against a certain property before he bids at an auction sale, wilfully abstains from making an inquiry "which he ought to have made" or that he was "grossly negligent" in failing to make such inquiry? I think, certainly not. A decree-holder when he wants to bring any property to sale in execution of his decree is required by law to make inquiry and to disclose every encumbrance to which the property sought to be sold is liable, but no rule of law requires him to make inquiry at the office of a Municipal Board to find out whether any Municipal taxes are due against the property. In my opinion it would be stretching the doctrine of constructive notice too far to say that in every case in which a person wants to bid for property liable to Municipal taxes he ought to make inquiries, before making the bid, whether any Municipal taxes are

outstanding against the property, or to hold that he was grossly negligent if he did not make such inquiry.

The Courts below have relied on the case of *Akhey Kumar Banerjee v. Corporation of Calcutta* (1) but in the first place we do not know whether the Calcutta Municipal Act that was in force at the time the ruling was made was or was not similar in its provisions to the United Provinces Municipalities Act of 1916, and, in the second the purchaser who was held in that case to have had constructive notice of the Municipal taxes was the mortgagee himself who had foreclosed the mortgaged property. The learned Judges said:

“When he took the mortgage he knew full well that if the rate was not duly paid the arrears would become a first charge upon the property and would gain priority over his debt.”

This shows that as it was necessary for the mortgagee in his own interest as such mortgagee to make inquiries about the Municipal taxes, he was presumed to have constructive notice of the taxes though at the same time it was said that:

“To a person in this position (a person who acquired title under an involuntary alienation) constructive notice cannot be imputed to the same extent as a purchaser at a private sale.”

I am clearly of opinion that in the circumstances of the case it would be inequitable to hold the appellant liable for Municipal taxes that accrued due against the house purchased by him prior to the date of his purchase.

I therefore decree the appeal with costs and setting aside the decree of the Courts below dismiss the plaintiff-respondent's suit.

Appeal allowed.

(1) (1915) LL.R., 42 Cal., 625.

1936

LALA
RAMJI LAL
V.
THE
MUNICIPAL
BOARD,
LUCKNOW

Ziaul Hasan,
J.